



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

statute is not really penal. *Southern Ry. Co. v. Bush*, 122 Ala. 470. The principal Alabama case also treats the statute as remedial. Missouri has an expressly penal statute as to killing by a railroad. Mo. REV. STAT., § 5425. The Supreme Court has treated this statute as penal, in considering its constitutionality. *Young v. St. Louis, Iron Mountain, & Southern R. Co.*, 227 Mo. 307. This court, wishing, in the principal case, to hold the statute remedial, has at last frankly fixed the true status of such a statute as "remedio-penal."

**DECEIT — GENERAL REQUISITES AND DEFENSES — WHETHER ONE REPRESENTS THAT HIS ACTS ARE LEGAL.** — A complaint for deceit against a director of a corporation set forth no other misrepresentation than that the directors declared a dividend, intending that the public should regard the declaration as a representation that the dividend had been earned, whereas it was in fact paid out of capital, contrary to a statute. *Held*, that the complaint sets forth no cause of action. *Ottinger v. Bennett*, 129 N. Y. Supp. 819 (App. Div.).

A representation may be effected by conduct as well as by words, provided that it may be reasonably implied from the conduct. *Collen v. Wright*, 8 E. & B. 647. Thus, an order for goods implies, by common understanding, an intention to pay for them. *Swift v. Rounds*, 19 R. I. 527. It by no means follows that the doing of an act is an implied representation of its legality. See *Ward v. Hobbs*, 4 A. C. 13, 29; 3 Q. B. D. 150, 163, 165. Whether it is so or not would seem to depend upon whether, on the particular facts of the case, it would be so understood by a reasonable person. It is true that the defendant's intent to mislead has sometimes been treated as the determining factor. *March v. First Nat. Bank*, 4 Hun (N. Y.) 466. It is submitted, however, that his secret intent cannot affect the question whether or not his conduct amounts to a statement of fact. If his act was ambiguous, it is not less so because he desired that a certain construction be put upon it. The question in the principal case would thus be whether, on its facts, a reasonable man would take the declaration of a dividend as a representation that it was to be paid only out of profits.

**EMINENT DOMAIN — COMPENSATION — DATE AS OF WHICH DAMAGES ARE ASSESSED.** — A railway company entered land without consent of the owner, or prior payment of compensation, and occupied it as a right of way for sixteen years, when the owner first brought suit for damages. The state constitution provided that "private property shall not be taken for public use, or damaged, without just compensation . . . , which shall be paid . . . before possession is taken." *Held*, that the damages are to be estimated as of the date of commencement of the action or the date of the trial. *Faulk v. Missouri River & N. W. Ry. Co.*, 132 N. W. 233 (S. D.).

Where such a constitutional provision exists, there is a conflict in the authorities as to the time as of which damages should be estimated. Some courts hold that the time of entry is decisive. *Wier v. St. Louis, etc. R. Co.*, 40 Kan. 130; *Stauffer v. East Stroudsburg Borough*, 215 Pa. St. 143. Their theory is analogous to the doctrine in the case of conversion of personal property. By bringing suit for damages, the landowner treats the wrongful entry as an appropriation, and hence the damages should be assessed as of that time. Moreover the objectionable speculative element involved in estimating the compensation according to the increased or decreased value of the land at the time of trial is avoided. Other courts, however, hold that the damages are to be determined by the time of trial, since, though the railroad can lawfully appropriate the land at any time, until it does so the title is in the owner, and hence damages should be estimated as of the time of lawful appropriation. *Railroad Co. v. Perkins*, 49 Oh. St. 326; *San Antonio, etc. Ry. Co. v. Ruby*, 80 Tex. 172.